IN THE CIRCUIT COURT OF
THE 11TH JUDICIAL CIRCUIT
IN AND FOR DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION
CASE NO. 94-08273 CA (22)

HOWARD A. ENGLE, M.D.,
et al.,
Plaintiffs,
vs.
R.J. REYNOLDS TOBACCO
COMPANY, et al.,
Defendants.
_____/

Miami-Dade County Courthouse
Miami, Florida
Tuesday, 1:45 p.m.
October 20, 1998

TRIAL - VOLUME 100

The above-styled cause came on for trial before the Honorable Robert Paul Kaye, Circuit Judge, pursuant to notice.

APPEARANCES:
STANLEY M. ROSENBLATT, ESQ.
SUSAN ROSENBLATT, ESQ.
On behalf of Plaintiffs
DECHERT PRICE & RHOADS
ROBERT C. HEIM, ESQ.
SEAN P. WAJERT, ESQ.
On behalf of Defendant Philip Morris
COLL DAVIDSON CARTER SMITH SALTER & BARKETT
NORMAN A. COLL, ESQ.
On behalf of Defendant Philip Morris
ZACK KOSNITZKY
STEPHEN N. ZACK, ESQ.
On behalf of Defendant Philip Morris
CARLTON FIELDS WARD EMMANUEL SMITH & CUTLER
R. BENJAMINE REID, ESQ.
On behalf of Defendant R.J. Reynolds
KING & SPALDING
MICHAEL RUSS, ESQ.
RICHARD A. SCHNEIDER, ESQ.
On behalf of Defendant Brown & Williamson
CLARKE SILVERGLATE WILLIAMS & MONTGOMERY
KELLY ANNE LUTHER, ESQ.
On behalf of Defendants Liggett Group
and Brooke Group
SHOOK HARDY & BACON
EDWARD A. MOSS, ESQ.
WILLIAM P. GERAGHTY, ESQ.
On behalf of Defendant Brown & Williamson
JAMES T. NEWSOM, ESQ.
On behalf of Defendant Lorillard
DEBEVOISE & PLIMPTON
JOSEPH R. MOODHE, ESQ.
ANNE COHEN, ESQ.
On behalf of Defendant The Council for Tobacco Research

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(APPEARANCES - Continued)

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GREENBERG TRAURIG HOFFMAN LIPOFF ROSEN & QUENTEL
DAVID L. ROSS, ESQ.
On behalf of Defendant Lorillard
MARTINEZ & GUTIERREZ
JOSE MARTINEZ, ESQ.
On behalf of Defendant Dosal Tobacco Corp.
and Tobacco Institute
KASOWITZ BENSON TORRES & FRIEDMAN
AARON MARKS, ESQ.
NANCY STRAUB, ESQ.
On behalf of Defendants Liggett Group
and Brooke Group
JONES DAY REAVIS & POGUE
RICHARD M. KIRBY, ESQ.
On behalf of Defendant RJ Reynolds

(Whereupon, the following proceedings were had:)
THE COURT: All right. Be seated, folks. Thank you.
Who is next in line?
MS. LUTHER: I am, Your Honor.
THE COURT: All right. Are we ready?
MS. LUTHER: May it please the Court. We've been introduced before. My name is Kelly Luther and I'm with the firm of Clarke, Silverglate, Williams & Montgomery. Also present are Aaron Marks and Nancy Straub of Kasowitz Benson Torres & Friedman. We represent two of the defendants in this case, Liggett Group, Incorporated and Brooke Group Limited.
Now, Liggett Group is a cigarette manufacturer. It is one of the smallest of the major cigarette defendants with approximately one and a half percent of the U.S. market and less than 500 employees.
It's located its headquarters here in Miami with its manufacturing plant in Durham, North Carolina. Brooke Group is also headquartered here in Miami, and it's Liggett's ultimate parent corporation.
Now, you're going to hear during the course of the trial a little bit about the relationship between the two companies, but I'm not going to bore you with that here.

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Early in the case you're going to meet a man by the name of Bennett LeBow. He is also a Miami resident and chief executive officer of Brooke Group Limited.
Mr. LeBow will testify live and he's going to explain to you the position of both Liggett and Brooke Group with regard to the issues in this case.
Now, you've heard a little bit already about Liggett and Brooke's positions from both Mr. Rosenblatt and Mr. Heim. Now you get to hear it from us.
Mr. LeBow is going to testify that Liggett Group stated that smoking cigarettes causes lung cancer, emphysema and heart disease. At the same time he also stated that smoking cigarettes is addictive.
Now, as a point of clarification, I know Mr. Rosenblatt stated this yesterday, but it bears repeating. The evidence is going to show that not everybody who smokes cigarettes is going to get lung cancer or heart disease or emphysema or is going to

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become addicted to smoking cigarettes. It's an individual issue.

Now, with regard to the questions of did the defendants behave properly over the years, we say yes. And Mr. Heim went into a fair amount of detail about that. There are a few points unique to Liggett that

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warrant further discussion.

Now, one of the things that the plaintiff emphasized during his opening or during their opening was this 1953 meeting of the tobacco company executives at the Plaza Hotel.

Now, according to the plaintiffs, they expect that the evidence will show that that was the birth place of the plan to deceive the American public. Now, regardless of how the evidence shakes out, the evidence will definitely show that Liggett was not present at that meeting.

Now, out of the 1953 meeting came The Frank Statement, which was also discussed in great length by Mr. Rosenblatt and Mr. Heim. According to the plaintiffs, it was The Frank Statement that the tobacco companies undertook a duty to the American public and made a number of misrepresentations.

Again, however the evidence goes, it will definitively show that Liggett did not participate in the drafting of The Frank Statement, and Liggett was not a signatory to The Frank Statement.

Now, also a product of the 1953 meeting and The Frank Statement was the formation of the Tobacco Industry Research Committee, which is now known as the Council for Tobacco Research, which is also the CTR.

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Liggett was a member of the CTR for a couple of years in the 1960s, but the evidence is going to show that Liggett did not play a part in the formation of the TIRC and it is no longer a member of the CTR.

Another organization that has been mentioned is the Tobacco Institute. Again, Liggett was a member of the Tobacco Institute for a period of time, but it was not involved in the formation of the Tobacco Institute and it has not been a member for some time.

Now, Liggett and Brooke are confident that when you hear the evidence on both sides of this case, that you are going to reach the conclusion that they behaved appropriately through the years.

Now, I'm sure you guys have all figured out by this time that there are a lot of issues in this case and there's going to be a lot of evidence from a whole lot of witnesses on behalf of Liggett and Brooke. I ask that you listen very closely to the evidence and at the conclusion of the case that you listen very carefully to Judge Kaye and the instructions that he'll give you and that you render an appropriate verdict.

THE COURT: Thank you.

All right, next.

MR. MOSS: May it please the Court. Good afternoon, ladies and gentlemen.

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I was introduced before. My name is Ed Moss and I represent Brown & Williamson Tobacco Corp. in this case along with Richard or Doc Schneider, the gentleman seated next to me.

I find myself in a rather unenviable position this afternoon because, number one, I've got to tell you up front, I'm not going to be anywhere near as short as Kelly Luther was in my remarks to you.

You've been sitting here listening to lawyers and there are a lot better things that you all would rather be doing than listen to lawyers for two days. You're going to listen to lawyers for a lot more than that, but you'll hear a lot from the witness stand in the days to come. And that's one of the things that I'm going to be talking to you about.

I think I can reasonably assure you, so you rest comfortable, a little more comfortable, and me too, that I'm not going to take as much time as Bob Heim did. Bob covered a lot with you. There is some left to be covered and I'm going to talk to you about it.

It's late in the day. It's 2:00 and you've been at it a long time. I'm going to try as hard as I can to be as direct to the point as I can. I think some of the -- all of the things that I'm going to

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address are relevant and important to your considerations, and I beg you to try -- it's not easy to sit here and listen to lawyers and pay attention. But I think if you're going to understand what this case is about, you've got to be able to understand both sides.

Mr. Rosenblatt spoke to you yesterday. He told you a lot of things about what their allegations were and supposedly what their proof is going to be.

Now, Mr. Heim also discussed with you what the proof is going to be. And Mr. Heim said something that I think is worth repeating. Judge Kaye told you earlier that we the lawyers, who are now able to address you in what we call opening statements or opening remarks, we're not giving you evidence. This is not evidence. However, surely Judge Kaye wouldn't allow us to take up two days of your valuable time if what we say did not have some meaningful value towards your ultimate disposition and decision in this case. We think it does.

The essence of what I'm saying is that I, like Mr. Heim, ask you to please hold all the lawyers, all the lawyers, to the commitment that they're making right now telling you that this is what the evidence is going to be. Go back and think about it as you go

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through the case and see if these commitments are met and by whom. I ask you to do that.

Let me just for a moment respond, not respond, but at least discuss the points that Kelly Luther, Liggett's lawyer, just made. And I'm not going

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to spend much time on that at all, but I do think a couple of points need to be made that you haven't heard yet and you will hear from the evidence.

Kelly said that Mr. LeBow will be here. I think he's coming as a witness for the plaintiff or called by the plaintiff, and we'll explain that to you. But there are some things that are important about Mr. LeBow that you will learn from the evidence.

Mr. LeBow bought Liggett, the Liggett Tobacco Company, some time in the mid '80s. Mr. LeBow never had any experience with a tobacco company before. He had nothing to do with tobacco.

You'll learn that Mr. LeBow is a business man and he's basically what's known in the industry, not tobacco industry, but on Wall Street as a take-over artist. And I don't mean that derogatorily, but he takes over companies and he's done a lot with taking over distressed companies.

You'll learn that Mr. LeBow did make the decision Kelly Luther told you about. Recently,

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Liggett changed a position that it held for 40 or 50 years, and Mr. LeBow had Liggett say that smoking causes certain diseases and smoking is addictive.

What you will learn is that Mr. LeBow, who is responsible, he'll tell you he was the one responsible for that decision. He's not a scientist. He's not a physician. He never even spoke to the scientists at Liggett about this decision. Mr. LeBow, if you ask him, can't even tell you where Liggett's medical library is. They've got one. He can't even tell you where their science lab is.

That's all right, but what you have to understand, the relevance of what I'm saying is Mr. LeBow's decision to do what he did was solely an economical one and business one, and we'll explain more to you about that.

But to have you sit here and think that Mr. LeBow did this on any other basis I think would be wrong, and that's all I'm going to say about Liggett. Mr. LeBow will be here. You'll hear about his background and experience. Basically, once again, judge it by the evidence.

Now, another thing that I think preliminarily is important to remind you of, and Mr. Heim spoke about it some, that is, the difference between an allegation

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or a claim, which I think all of you were probably questioned about when you were questioned as prospective jurors here, and proof: What really is said.

There's a world of difference. We talked to you about in this case certain allegations or claims are made by the plaintiffs, but ultimately they're put to the test of proof.

I ask you throughout this case on both sides, put us through the test of proof; not what a lawyer comes in here and says. Obviously, I say that we believe we're providing a service to you, but hold us

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to the commitment. It's more of the commitment that I spoke to you about.

Proof is a lot different, a lot more difficult than allegations. Allegations are easy and you'll learn that. Proving them is not so easy.

Another thing that you're going to learn from the evidence in this case, that in this country it is not fraud to express your belief or your opinion. You'll learn that. It's an important concept throughout this case.

As Mr. Heim told you, you'll also learn that cigarettes, the cigarettes that are the subject of this lawsuit, the lawsuit brought by plaintiffs,

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Mr. Rosenblatt calls the Engle class, those cigarettes are the most studied, by far the most studied product not only in the United States, but in the world.

There has been no product that has ever been manufactured that has received more attention, more scientific, more medical and every other type of attention than the cigarette.

That's important because, as Mr. Heim said, this case is a case about choice. It's a case about a lot of things, but one of the very threads that runs through this case is choice and individual responsibility.

And that's the relationship of the studied product. People know more about cigarettes than any product that's ever been produced. And that's the relevance of Mr. Heim's discussion about the history of cigarettes and the awareness.

You will see throughout this case at various times many, many documents. As you were told before, there literally are millions of documents of this industry that have been created over the past approximately 50 years. Mr. Heim told you right now there are collectively about 100,000 people that work for these companies collectively. If you go back over 50 years, the number of people working there probably

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is about the same.

And, therefore, a number, a great number of documents have been created. And there's no way that I will sit here and look you in the eye and tell you that all of those documents are documents that make sense or that express ideas that simply shouldn't have been expressed.

There are a bunch of documents there that are simply -- I characterize as plain dumb. There are others that are whacky. Pick any description you want, you will find documents. You'll also find a lot of documents that tell you really where it is. But I ask you, please, to keep in context, when you look at these documents, what was going on at the time, and more importantly, more importantly, judge and base your decision upon what was done by these companies, not by what someone may have thought or had written down, but what was done. Was that thought carried out? That's something that was done. And this I think is an

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important function for you all and I want to raise it up front.

We had a lot of discussion -- obviously I'm speaking on behalf of all of the defendants except Liggett, as did Mr. Heim. And to have you believe that these remarks that I'm about to make about the evidence

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have not been shared and worked on by all of us would be silly. It's a joint effort, but it saves you a lot of time. And there was a discussion about whether I should tell you this or not, but I just think that it's important, because otherwise I'd plain be hiding my head in the sand.

Folks, some people simply think that it's politically correct or it's the right --

MR. ROSENBLATT: Objection, Your Honor.

MR. MOSS: I haven't said anything.

MR. ROSENBLATT: You said "politically correct."

MR. MOSS: Judge.

THE COURT: Gentlemen, both of you, please. There should be no comments other than the one word "objection" or another descriptive word such as "relevance, materiality." Other than that, we'll come sidebar.

(Proceedings were had at sidebar.)

MR. MOSS: Let me continue. In some circles, representing tobacco companies or tobacco companies are not popular, is not a popular thing, however, here we are in a court of law. Cases must be decided upon the evidence and that's a promise. That's the oath that you took. This is not a popularity contest. That's

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all I'll say on that.

Now, yesterday the plaintiff suggested that these companies, I mean, if you listen to what he said, he suggested these companies are populated by uncaring, unconcerned, basic --

MR. ROSENBLATT: Objection.

THE COURT: Overruled.

MR. MOSS: Let me start again.

Yesterday he suggested these companies are populated by uncaring, unconcerned and callous individuals who could have cared less about the health of the American public. That's the impression that clearly I told you his evidence would show, no getting around it.

I ask you to decide this case on the evidence. And you will hear from a lot of people that work for these tobacco companies, you'll hear from scientists, you'll hear from people that are involved in the manufacture of the product, you'll hear from people that are involved in running the companies. All I ask of you is throughout this case be judges, based upon your observations of them here, of what they have to say. Look them in the eye and you make your own determination, not based upon some suggestion or some allegation that you heard yesterday. That's all I ask.

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Now, basically I'm going to talk about four topics with you today. And I really believe that each of them will directly respond to allegations that the plaintiff made yesterday.

The first thing I'll address is the claim that the plaintiffs -- that the defendants that I represent did nothing, did nothing to respond to the issues that arose in the '50s regarding smoking and health. That's the clear import of what you heard from plaintiffs' counsel yesterday.

I submit to you that the evidence will show that the defendants made a responsible response to those concerns. I'll talk about that in more detail. I think the evidence will show that dramatic results were achieved by their efforts to modify their products.

Let me show you something.

THE COURT: You may have to turn that around so this side can see it.

MR. MOSS: Can you all see it? I'm going to come back to this later.

But simply, remember yesterday, one thing that Mr. Rosenblatt said struck me, and he says: You won't see any document, you won't see any evidence that these people did anything to respond to the health

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concerns.

What this chart is, it shows you, the yellow line is tar and the red line, the orange line, is nicotine. The chart begins basically in 1954 and ends in 1998. I'll be talking basically about the time between '54 and 1994, which is the date this case was filed.

But just for orientation, when the health concerns began to emerge, here is where the average, the average yield delivery of tar of a cigarette in the United States was. And here is where the average delivery, the average delivery of nicotine of cigarettes in the United States was (Indicating). You go down to 1994, here and here (Indicating). We'll get to that more.

But what I'm trying to suggest to you, this clearly demonstrates, better than any document I can provide to you, what was done.

Now, that wasn't an easy achievement. It took a lot, a lot of work by these companies, hundreds of millions of dollars of expenditures to get there. And we'll explain that more, but I just wanted you to see that.

Second thing I'm going to talk to you about today will respond to the plaintiffs' allegations that

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these companies manipulated nicotine. Do you remember that? I suggest to you that after you hear the evidence in this case, you'll find that that is an allegation they can't prove. It's an allegation that is meritless. It's without substance. It's a claim

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that I suggest to you is not based upon the facts, and as importantly, it's not based upon good science. And I'll demonstrate that to you in a few minutes. Again, the concept of allegation versus proof.

You'll also learn in this case, contrary to what plaintiffs' counsel suggested to you, that these companies, in manufacturing and making their cigarettes, do not blend -- the cigarettes, and I'm getting ahead of myself here, but basically cigarettes are made by blending together different tobaccos and basically the goal -- here are two goals. The primary goal is blending for taste that smokers will enjoy and like and will accept.

And the second goal is that they blend for tar, tar delivery. There is no blending, you'll see that, for nicotine. You'll learn something about that and you'll learn in a few minutes how the nicotine fell, along with the tar, naturally.

Plaintiff had two theories on the nicotine manipulation that I will address in a few minutes in

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more detail.

The third thing that I'll address are plaintiffs' allegations yesterday regarding under-age smoking. That was toward the end of his presentation yesterday. And we're going to take that right on and talk to you about that and explain to you, we'll talk to you about the causes, the causes, what the people that study the phenomena of under-age activities, risky activities, including smoking, a phenomena called risk taking, and we'll talk about what the causes are. Causes are not these companies. The causes are things like peer pressure, the factors like parental supervision or lack of parental supervision. We'll go into that in detail and tell you about the evidence.

You'll also learn, in case you don't know already, that these companies don't sell to smokers. They don't sell to consumers. They're not out there selling to the people that buy the cigarettes. Never have.

You'll also learn that these companies don't make the laws regarding under-age smoking, and they're not charged with and they can't enforce the laws. That's for somebody else. And we'll talk about that.

And the final subject that I'll briefly address with you are some of the plaintiffs'

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allegations alleging fraud. Plaintiffs allege that plaintiffs have been defrauded and kept from knowing the risks of smoking. I submit to you that we will demonstrate that that, once again, is an allegation. It's an allegation. It simply won't fly, so to speak, just won't fly in the face of all the evidence that you hear here. It will fly in the face of your common sense.

For a moment don't ever forget, please, I beg you, as you hear evidence in this case, obviously you're going to test it from the witnesses and their knowledge and all the other things that Judge Kaye will

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tell you about, but also test the conclusions and what people say and the results by applying your good, old-fashioned common sense to it. It goes a long, long way in solving some of the issues in this case. Again, it's another claim versus proof.

Now, let me talk to you about the first subject that I said, and that is the company's product modification. Mr. Heim this morning told you about one part of the companies' response to the smoking and health crisis that emerged in the '50s. When I say crisis, the smoking and health publicity. As I said, nothing, no product ever received more publicity than that of cigarettes beginning in the '50s, and it's

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continued on through today.

Mr. Heim told you about one part of the response and that was what the companies did to go out and research, but more importantly fund research with hundreds of millions of dollars in commitments, not only to the entity that he identified as CTR, Council for Tobacco Research, but outside of that to the leading universities and medical centers, independent medical centers and clinics throughout the United States. That's one of the responses, one part of it. And it's very significant.

I'm going to talk to you about another part of their response, and that is, what they did when the concerns emerged about trying to modify their product to address the health concerns that were being expressed. And that's that chart there. And we'll fill in some -- I will fill in some of the details in a moment.

We'll show you that the plaintiffs claim that these companies did nothing to try to modify their product, try and make a safer cigarette. Plaintiffs' claim on that is simply wrong.

Now, yesterday Mr. Rosenblatt said that the tobacco companies do not say -- this is important, I believe -- do not say that the cigarette, which they

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make which contains less tar and nicotine, is a safer cigarette. That's correct, they don't say that.

And let me tell you why they don't say that. The evidence will show that these companies cannot do that. They are prohibited by law from saying that a product that they modify or put out is a safer product. They're prohibited by Federal law, unless they can establish and demonstrate with scientific proof that it's safer.

That gets to the point Mr. Heim spoke about that we still don't know mechanisms. There is no way to scientifically prove that.

But what I think is of significance and what you didn't learn yesterday in Mr. Rosenblatt's presentation is that somebody else has said they believe these products with lower tar and lower nicotine are better for the public's health.

Guess who that is? That was no one less than the United States public health community and some of

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the outside scientists Mr. Rosenblatt himself was referring to.

You'll learn about that, because the public health community believed that the way to go was to lower tar. And if you lower tar, indeed, you would have a product that most likely presented less risk,

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less health risk to the users. That wasn't told to you yesterday.

Now --

MR. ROSENBLATT: Your Honor, objection.

THE COURT: Sidebar..

(Proceedings were had at sidebar.)

MR. MOSS: Back to the issue I was speaking about, the issue that was raised yesterday by Mr. Rosenblatt as to companies' product modification efforts.

At the end of this case you will be asked to make your decision. You'll be given some verdict questions or verdict interrogatories. Those are written questions that will be presented to you as the jury, and you'll be asked to answer them based upon the evidence.

While we don't know for certain, as Mr. Rosenblatt said yesterday, exactly what all the questions will be, we know based upon the claims made in his case what some of the questions certainly will be.

One of the questions you will be asked will relate to the plaintiffs' claims whether cigarettes are a defective product. That's one of his claims, that they are defective. Judge Kaye will instruct you on

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the law that relates to this claim.

He'll also instruct you on the law that relates to the defenses that we as defendants have to that claim. One of the questions that you will likely be asked on that is whether the average consumer was aware that smoking cigarettes carried a health risk.

Now, that was part of the discussion of Mr. Heim yesterday -- that was today. Sorry. The awareness, he spent a good deal of time with you, because I think there's a lot of information that is important there.

But another question related to that will be asked of you whether or not there was a feasible alternative.

MR. ROSENBLATT: I'm going to object, Your Honor. We don't know what questions --

THE COURT: I'll overrule the objection.

Let me just make a statement here so that you can both take advantage of the statement.

It is absolutely true at this point we do not know the exact nature of the questions that are going to be asked. The questions that are going to be asked you to resolve at the end of this case will depend on large part upon what the evidence is and how the evidence develops, and I'm not a sooth sayer and I

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don't know how that's going to develop.

Things change, as you can tell through the course of a proceeding, from what you plan it to be as to what it actually turns out to be. So just be advised that there are some areas which you will be asked to resolve. Some of these areas fall within the category that counsel is talking about.

Overruled.

MR. MOSS: And clearly, nor am I a sooth sayer, so, I mean, you know, we've got to do the best we can all along in helping you all.

Plaintiffs have made a claim that cigarettes are defective. There is law regarding that and we think at the end of the case Judge Kaye will ask you to answer certain questions.

The first one on that issue was whether or not the average consumer was aware of the risks of smoking, health risks.

We think another question that you will be asked, and if you're not asked it, you're not asked it, but I think you will be, is whether or not there was a feasible alternative, that is, a commercially feasible alternative available which these defendants did not reasonably pursue, that is, making another type of a cigarette or modifying their product.

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And that's part of the discussion that I'm going to be talking to you about, about what they did to pursue not only to modify their products, but to pursue feasible alternatives. And I think you're going to be surprised and impressed as to what was done. Because I think at the end of this case you will determine there was not any reasonable alternative which these companies failed to pursue.

Remember Mr. Rosenblatt's discussion, then Mr. Heim's discussion today, about the mouse skin painting by doctors Wynder and Graham? It was that that prompted a lot of activity by the public health community, by the outside scientists, and it was that that these companies were basically responding to with this Frank Statement. And that's when all the things got put into motion.

Now, what you're going to find is two things. Number one, as the public health community got into gear and as tobacco, cigarette smoke began to be studied intensely, as tests were being done such as the mouse skin painting test and others that I'll be talking about, came to be kind of a unanimity by the people studying smoke outside the companies and by some inside the companies.

And that basically was a plea or a cry, or

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however you want to say it, let's find a way to lower tar. We think tar is the health problem. They had no proof of that. Let me say that I don't mean they had no proof of that. They had no proof of that in the medical or conventional sense.

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They had a mouse skin painting test, which Mr. Heim told you about and told you that the same kind of results could be accomplished if someone went about and painted enough tomato juice on the back of a mouse. Or you can develop tumors if you put enough of it on the back of a shaved mouse with ordinary table pepper. That didn't prove anything, but it certainly alerted everyone that you need to investigate something.

Now, the companies at that point did not believe -- and I think you're going to find they had a tremendous amount of support in the outside scientific community -- that the result of the mouse skin painting test meant cause and effect. Far from it.

But the question I think I want you to, if you would please, ask yourselves through this trial is, did the fact that the companies didn't believe that that meant cause and effect stop them from engaging in a massive undertaking to investigate their product and attempt to modify it?

I think you'll find from the evidence that

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the answer is absolutely not. They went about it. They went about it expeditiously. They devoted tons and tons of resources, dollars, to get it done, as well as the manpower. They hired -- they already had scientists, but they hired some of the best and brightest scientists available to go about this task. It's a task that took or spanned, as you can see, 40 years. And we'll talk to you about that more.

The companies went about ways of exploring how to lower tar. They also went about trying to remove or lower some of the components or compounds in smoke.

You'll learn that they did this initially on their own, then there came a period of time they did it in a partnership or a joint venture. You may be surprised to learn that there was a period of about 10 years, I think from 1967 to 1978 approximately, I could get my starting and ending date wrong, but it's about 10 years, from the '60s to the '70s, where this partnership was with basically the United States Government.

And I'll tell you more about this partnership. It was called the TWG or Tobacco Working Group. It becomes important, I believe, to your assessment of what was done, to your assessment in this

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case of what these companies did. I'll get to that in a moment.

The name Dr. Wynder by now may not mean something to you all, but by the end of this case it will. It was Wynder and Graham that initially did the epidemiological study that Mr. Heim spoke to you about and Mr. Rosenblatt, and in 1953 or '54 did the mouse skin painting.

And Dr. Wynder believed, you'll learn from the evidence, when all of this began, that if the companies determined that the tar delivery of the cigarettes in this country, the reduction of 40

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percent, would be indeed a significant and admirable achievement, he believed it would be well on the way toward the production of this safer cigarette. No one less than Dr. Wynder said that.

Now, what you see in this chart, the reduction of tar, doesn't represent the 40 percent, ladies and gentlemen of the jury. It represents almost 70 percent, I think it's 68 to be precise, I can't point it out to you, but it approaches 70 percent, coming close to doubling the expectations of Dr. Wynder. Far from an uncaring and irresponsible reaction to crisis, to the health concerns.

Now, let me talk to you, and we will bring

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the defendants, a number of witnesses who will talk about how this effort was achieved.

You may hear from people such as David Townsend, who is a gentleman who is at R.J. Reynolds. He's a scientist and knows an awful lot of history. I think you'll find what he has to say exceptionally interesting and enlightening. He obviously can explain it much better than I can, and I'm not going to even try to.

You'll also hear from Lance Reynolds, who is a scientist at Brown & Williamson. You may hear from Alex Spears of Lorillard, and you may hear from Cathy Ellis or Cliff Lilly at Philip Morris. These are people that will be able to explain the concepts that I'm kind of laboring here in a much better and more clear, understandable fashion. I know something about it, but clearly these are the people I want you to listen and pay attention to.

Now, the chart itself, when it talks about sales-weighted average, what that means is that all of the different kinds of cigarettes that are being smoked in the United States in a particular time period in a particular year are considered.

And then the differing tar and nicotine deliveries, and you'll find that, as we go on, that

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there is a whole spectrum of nicotine and tar deliveries available, depending upon the brand, and that's a matter of public knowledge, public advertisement. And I'll go into that in a moment.

But all of those are averaged according to their percentage of sales. What I mean by according to percentage of sales is that suppose for a moment you had ten brands that averaged -- each of them had, say, 8 percent of the -- suppose you only had 11 brands. Obviously, there are many, many more, but just to give you an example, if you had ten of them and they each averaged 8 percent of the market and their deliveries were different, but each delivery would account for 8 percent of the total, and you had another brand that sold 20 percent of the market, that brand would account for 20 percent of this number. So that's what we mean by sales-weighted average.

I hope I've made that clear. If I haven't, we'll get somebody who can do it better on our case.

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And all of that is added up and that's the figure that you get there.

Now, I think another important aspect of this, which you may not know, is that by Federal law each tobacco manufacturer must report, at least annually if not more frequently, the tar and nicotine

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delivery of each of their brands. They report that to the Federal government. It's required, they've been doing that for a long time.

Each company, in any advertisement of its brand, must include on that advertisement the tar and nicotine delivery of that brand. That's what I mean that it's publicly available. And you're going to find out the wide range that's available.

Another aspect of this chart which I think needs a moment of explanation is that, as you can see, tar and nicotine roughly fall together.

Can you all see this? This is not in your way?

They fall together, and the reason for that is when they start out, they stand in a ratio of about 10 to 1. You can see that if you go across, 38 milligrams for tar, roughly 3.8 milligrams for nicotine.

But what was found out, as this development went on, is that as you reduce tar, not talking about how tar was reduced, your reduced nicotine fell with the tar. Just a matter of science. And you'll learn that. You'll learn it from plaintiffs' experts; you'll learn it from our experts.

Now, before I go into how these results were

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achieved, because I think it's important, perhaps some basic understanding of tobacco -- just maybe a two- or three-minute primer on tobacco, because our evidence will demonstrate this.

First of all, for those of you who don't know, tobacco is simply a plant. It's an agricultural plant. Mr. Heim told you it was called a cash crop, but it grows in the field.

Now, as far as nicotine is concerned, nicotine naturally occurs in that plant. Nicotine is a natural part of tobacco, just like caffeine is a natural part of the coffee bean. That's the way it happened.

Like any organic material, a tobacco leaf is a mixture of sugars, proteins, starches and other compounds. It's no different than any other plant.

Now, insofar as tobacco being used in cigarettes, what you'll learn is tobacco leaves are taken from the field, then they're dried and cured. There are different types of tobacco you'll learn about. And each one of these different types of tobacco has a different taste and a different quality.

And to make a cigarette that consumers enjoy or will buy, there is a lot of blending that goes on between different types of tobacco. You've got tobacco

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such as, you'll learn about this, and maybe some of you know it, burly, Oriental, Virginia or bright tobacco, which are one in the same. And many other types, but basically you'll learn that in order to make a cigarette, there is a blending process that goes on.

We'll have witnesses here that will explain it. Some of the people that will be here probably know more and have more expertise on the blending of tobacco than any persons in the world. They'll be here and explain this process to you.

What you will learn is that the blending of tobacco that goes into a cigarette is not -- it's not a science that perhaps someone would have you believe. It is more like the work of, for lack of a better example, a wine maker or someone that makes cigars who are trying to do it for taste. And you'll get more of that as we go through it.

I think an important point for you to remember, a take-away point from this evidence, is that there is more nicotine in the tobacco leaf that comes from the plant, from the ground, than there is in the tobacco that eventually goes into the cigarette. Nicotine is lost in the process, it's lost in the drying, it's lost in the curing. So there's less nicotine in the product than if you took it right from

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the field.

You'll also learn through this case how cigarettes are manufactured. We'll have people here to talk to you about that. Because it's important to understand it. It's important for you to understand that the evidence will show that the making of a cigarette is not just chopped up. You don't just go chop up a tobacco leaf and roll some paper and there you are.

Number one, Mr. Rosenblatt said something yesterday. He said that the making of a cigarette is a very complex procedure. It is. But let me tell you the reason it's complex. It's complex because in order to make a cigarette with low tar and low nicotine, a lot has to go into it to achieve that. Because if you just took tobacco and put it in and rolled it up, you would have a cigarette with substantially, substantially, higher tar and nicotine than anything that you see on this chart. The other thing is you'd probably have a cigarette that tasted so harsh that very few people would want to buy that product. But you'll learn about that.

As I said, the complexities of making a cigarette are not what you heard yesterday, that is, it's complex because they want to boost the nicotine.

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It's complex because they wanted to and have succeeded in lowering the tar and nicotine.

For those of you who don't smoke, I think it would be helpful to go through for a moment -- I'm not going to light up a cigarette, but show you how one

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goes about smoking a cigarette or what happens.

First of all, obviously there is the filter. This is the paper and filter paper around, the brown. But this end of the cigarette gets lit. Then the cigarette begins to burn.

Now, as the smoker takes a puff, he draws a stream of smoke through what is called the tobacco column. And that's what's in white here. And that puff goes through the tobacco column and the smoker draws into his mouth a puff of smoke. Puff of smoke comes out.

Now, that puff, you'll learn, that puff of smoke that comes out consists of tiny particles of -- tiny particulates rather, particulates, small pieces of matter, as well as tiny particles of liquids and vapors.

Now, if you were able to look at these particles, which you can't with a naked eye, the liquids and vapors, and divide them into three parts, what you'd find is you've got water, nicotine and then

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everything else.

Now, it's the everything else which when deposited on a filter pad is what became known as tar. In other words, the nicotine and the water in that puff, take that out and everything else, put it on a filter pad, that's the tar.

Now, it is this smoke that we're just talking about that the scientific community and these companies spent so much time and so long studying. One of the first responses in the '50s was, of the companies, we need to know more about smoke. We know a lot about it, but, obviously, we don't know enough about it.

Now, that created a problem for a number of reasons. It wasn't a simple task. Smoke you'll find is a complex mixture. And this is true not only for tobacco smoke, for any smoke. Anytime something burns you have a complex mixture.

When all of this began, that is, in the early '50s, there were about 120 components or compounds of smoke that were identified.

Yesterday Mr. Rosenblatt told you, and he's correct, that today, today they've identified about 4,000 in smoke, in cigarette smoke.

Now, that was not an easy task, ladies and gentlemen. Mr. Heim touched on it. It was a very

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difficult -- it was very difficult to study smoke and it was difficult to study smoke mainly because the amounts of the compounds that we're talking about in cigarette smoke are so minute, so tiny, that they had to either improve existing laboratory equipment or invent a lot, which they did both, so they could study things that small.

In fact, in a moment I'm going to tell you about some of the measurements that are used in identifying components of tobacco smoke. Many of them will be familiar terms, but some of them, I suggest, other than those that have had a lot of chemistry or

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biology, may be terms you haven't heard before.

But as Mr. Heim told you, gas chromatography devices had to be improved and invented, mass spectra, just a whole bunch of equipment, scientific equipment, that would allow them to study the components of smoke that were in such small, small amounts.

As I said, this is not unique to cigarette smoke. It's unique to any smoke. What you'll also learn is many of the compounds that are in smoke that have been identified are found in many things, many foods, that all of us are exposed to every day such as tomatoes, potatoes, beer, fish, milk, cheese, spinach. We'll go through that with witnesses. But there are a

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lot of things in there that are not unique to cigarette smoke.

As I said, the size of the components found in smoke are basically so small that if you held it in your hand, you likely couldn't see it. So the measurements we're going to be dealing with here through the evidence would be -- first of all, let me give you a bit of a lesson. I hate to lecture to you, but I think it's going to be helpful.

You'll find out that a gram is three one-hundredths of an ounce. You'll hear the term milligrams in measuring components of smoke. You'll learn that a milligram is one one-thousandth of a gram, or to put it another way, one twenty-eight-thousandths of an ounce. A milligram, if you had a grain of sugar, one grain of sugar in your hand, that is about what a milligram is.

Micrograms, a number of the components of smoke are measured in micrograms. Micrograms are one-millionth of a gram. You'll hear the term frequently used here nanogram. Nanogram is also used to measure the size of the compounds in smoke. And a nanogram is one-billionth of a gram. I tried to think of an example to portray that to you, and it's so small, I can't. But I promise you, you'll learn it's

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very, very small. As is a picogram, which is one-trillionth of a gram.

These are measurements, as I told you, some of you may have never heard of these, understandably. But these are the sizes and quantities that had to be identified. That's what I'm talking about; it wasn't an easy task, but it was done.

Now, at the same time these companies were studying smoke, the outside community was doing the same thing. So it was an effort and it was taking place both in the public medical community and inside the companies.

Now, these companies made significant contributions to the study of smoke. For example, R.J. Reynolds built one of the earliest chromatography devices, earliest ever. They did it with their own scientists in their labs. And the science was so new that they actually built it in a stairwell. They needed room, so they built it in a stairwell that was

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three stories high. And Reynolds and all these other companies continued with improving what was available and inventing new equipment, which you'll hear about through our witnesses.

Now, let me tell you about one other aspect of this effort, and Mr. Heim touched on it this morning

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a bit. You'll learn that American Tobacco Company, which is a client of mine, as early as 1936 participated and funded a cooperative research effort at the Medical College of Virginia at the University of Virginia, the Medical College of Virginia.

You'll also learn that in about 1961 that effort, the funding at the University of Virginia, was joined by Philip Morris, R.J. Reynolds, Lorillard and Brown & Williamson.

Now, the point I'm trying to make here is through that effort many, many articles, many books were published. But probably the most significant one is the one Mr. Heim told you about, which was a book which -- I'm not going to bring them over, but right here is a series of four texts, pretty big. Mr. Heim told you a little bit about it.

This is the first one, green one, entitled Tobacco Clinical and Medical Studies. That book was authored by Drs. Larson, Haag and Silvette. Larson, Haag and Silvette's study of tobacco, which came out, first one in '61, you'll find has become more or less, certainly at the time, the bible in the study of smoke.

They had several chapters devoted to what I've been talking about, that is, the study of smoke chemistry, the study of smoke. It was that book that

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was principally -- that book was used as a principal resource by the Surgeon General in producing the first Surgeon General's Report in 1964. You'll find that, and you'll have time to look at those books during the trial.

Now, initially, getting back to this story of how this result was achieved, one of the early ways in which they attempted to reduce the tar was through a technique called selective reduction. Basically what would happen is that scientists, mostly outside the company, but in the company, too, as they learned more about what was in smoke as the study of smoke chemistry progressed, they would theorize: Well, we find this in the smoke, and if you -- tobacco company research, because you know more than anyone else about how to modify your product. You don't know as much about biological research as we do, but you know better than anyone else your products and how to modify them. And they theorized: Well, if you could get rid of X, then we think by getting rid of it or reducing it, you're on the right track, and maybe it's X that is causing this health association that we see exists.

Now, this went on, this effort to identify a component, for several years. It was basically a situation where the outside community would identify

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something. They'd say, for example: It was determined that one of the components of smoke was something called BAP or benzopyrene. There are a lot of these names that you'll hear later, but benzopyrene was one of them. The companies went about finding ways of ridding tobacco smoke of BAP.

Now, what you need to understand is that BAP is not unique only to smoke. If you charcoal a steak in your backyard, you get BAP; charcoal a hamburger or whatever else; if you burn leaves. But in any event, the companies were charged with finding a way to get rid of the BAP. They went about it and some scientists suggested that in order to do that, perhaps they ought to use nitrates to rid the smoke of BAP. And they did.

THE COURT: Counsel, let me interrupt just one second. I think the jury needs a break. Hold the thought.

You're first in line.

(The panel of jurors exited the courtroom.)

THE COURT: I know it's difficult to break in the middle of a thought. But it had to be done.

MR. MOSS: It's easy to break in the middle of my thoughts.

THE COURT: We'll be in recess.

(A brief recess was had.)

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(A panel of jurors entered the courtroom.)

THE COURT: All right. Be seated, folks. Thank you. Everybody happy now?

MR. MOSS: I'm going to make you a bit more happy. We've had one of these conferences while you were out and I've Xed out a bunch of stuff. But there are some things that I really do need to talk to you about. I know it's late in the day and I appreciate you all hanging in there. I think in the end it will be helpful to everybody in the ultimate decisions.

Having said that, I've got to go back to this BAP, benzopyrene, which we left off on. In any event, that was identified. The companies were told to try to eliminate it through this selective reduction process or technique.

A selection was made to use nitrates to do it. Nitrates were used to do it. Some of it or all of it was eliminated in some tests, but what happened was it produced another problem called nitration. Eventually, what you're going to find out is that the scientific community, including the famous Dr. Wynder, told the tobacco companies: Quit messing with benzopyrene because we have concluded that the amount of benzopyrene in tobacco smoke is so infinitesimal that it can't be the culprit.

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Now, this search for the culprit, so to speak, went on, and it was a constant moving target. Without me going through any of the others that were chased, suffice it to say, the experience was similar. They were never able to identify a culprit which, if

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removed, would allow someone to say that the tar tested with the removed compound could allow you or the outside health community to call this a safe cigarette.

The culprit they were looking for was, I guess for lack of a better word, was the proverbial silver bullet. In other words, the term "silver bullet" means if you could find that one thing, you've found the silver bullet, and you've now eliminated the health risk.

That effort continues through today, continues by the outside community and by the tobacco companies. That silver bullet to date has not been identified. That's part of the story Mr. Heim told you about. We don't have a mechanism.

In any event, there eventually came a time, and all of this was being done simultaneously, when the outside public health community, and in particular the TWG, Tobacco Working Group -- remember I told you that was that 10-year partnership -- concluded that the best way to attack this problem, the problem of lowering

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tar, was to attack it by a technique known as general reduction, which basically is what it sounds like; a technique whereby you generally reduce all of the components, all of the compounds in smoke, so that you drive down those compounds. And as you drive them down, you reduce the amount of tar. A selective reduction just didn't work.

This chart will demonstrate some of the general reduction techniques that were utilized. And witnesses will be here to testify about each of them so that you'll understand them completely.

But just for the purpose of this exercise, in an effort to move on, let me just tell you about, in this time period, from the '50s to the '60s, first of all, filters were developed. You'll learn that when all of this started in the '50s, about two percent of the cigarettes produced in the United States had filters; 98 percent were unfiltered. Today you'll learn that 97 or 98 percent of all cigarettes produced in the United States are filtered; one or two percent are not filtered.

The filter, which in and of itself is a very complicated process, because there are all types of them, all types of designs that go into various filters. But in any event, you'll learn that the

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filter was an incredibly successful general reduction technique that began the process that eventually you see here. Filters were used; filters were improved; filters were developed; new technology; new materials; eventually a filter made of -- well, let me move on, without me -- cellulose acetate and other types. Porous paper was developed. That is, paper that had microscopically small holes in it.

And the reason that acted to reduce tar was that as -- it allowed air into the -- here it is. This paper is porous paper. There are all different types. But it allowed air into there. As air got in there and

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as the smoker would inhale the puff, the air diluted the strength of the smoke. Another general reduction technique.

Reconstituted tobacco, which you'll hear about. What you'll find is that initially the only part of the tobacco leaf that was used in the -- in making cigarette tobacco, tobacco that would go in a cigarette, was the leaf or the lamina. The stems or the veins through the leaves we've discarded. But it was discovered along the line that if you utilize the stems and the other pieces in making tobacco, the stems and other pieces had less, produced less nicotine and less tar.

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So a process was developed whereby they would take the stems and pieces and make what is called reconstituted tobacco. They would take them, and through a process, a slurry process, would make tobacco sheet. And they would take that and that would be part of the blend. So you couldn't use too much of it, because if you used too much of it, it simply didn't taste good, is what smokers reported.

But part of this blending -- so reconstituted tobacco was another step along the way in generally reducing the tar. And then because nicotine follows tar, the tar and nicotine.

You had tip ventilation, which is the same theory as porous paper, but where the filters became ventilated in different ways so that the same process as you had with porous paper worked and further reduced it.

You had development of fast burning papers -- that's not on there -- so that the cigarette itself would not be smoked as long because the paper burned faster, so there would be less tar that would be delivered.

Then you had something that sounds simple, that we would reduce circumference of cigarettes. It would sound simply, obviously if you reduce the

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circumference, you had less tobacco. And if you have less tobacco, you get less tar. But this was a very difficult process. It took a long time and a lot of money. This is a conventional-size cigarette. This is a cigarette. It's a Capri, with a reduced circumference. We'll have witnesses here to tell you about it. This was not a simple process.

You had another example -- that's the last one that I'll talk about for a moment -- was expanded tobacco. These companies developed -- that's right here, came along later, developed a process where they could, through freezing or other means, puff up tobacco, much like I guess you puff up a cereal, Puffed Wheat or Rice Krispies. Similar -- obviously the processes were different, but really what happened was that you used, again, a blend-expanded tobacco. So you could fill up more space in a cigarette with expanded tobacco. In other words, you'd have to use a lot more tobacco that was unexpanded to fill up the same space.

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So if I had two jars here, and they both weighed the same, you would see that a jar of nonexpanded tobacco would come to about here, and a jar with the same weight of expanded tobacco would be up here (Indicating). This was another technique of general reduction.

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There will be others that you'll learn about. The companies tried tobacco substitutes; in other words, don't make a cigarette with tobacco, see if we can have something that people like to smoke.

They tried peanut shells; they tried lettuce; they even tried, and when I tell you the first time I heard I laughed, they tried petunias. Imagine smoking petunias? But they tried. They tried hundreds of others.

They had problems with it. Number one, many of the substitutes that they used burned the same as tobacco, had the same problems, had the same compounds, or many of the same, others simply tasted bad. People wouldn't buy them. So substitutes won't work, but they tried them. They spent a lot of money trying it.

Now, what would they do? And you'll learn later on about what a toxicology test is. They basically would minister some amount of dose to some animal or other living organism and compare the effect of that to an organism or animal that was not exposed to it. Those are called toxicology tests. They used, the tobacco companies, in other words, when they would have a -- use a general reduction technique, they would take that tar that was generally reduced and apply it to the toxicology tests of the day.

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They'd do the same thing when they did selective reduction. There were a number of these tests. They used every one of them being used by the outside scientists. The question was always: Can results in these toxicology tests, that were obviously not conducted on humans, be extrapolated into what would happen to a human who, number one, doesn't get the same amount? The doses they were using were significant. And more importantly, a human doesn't paint tobacco tar on his or her back; they smoke tobacco. So by a different means of administration.

But the point is that the fact that the companies questioned the relevance of all this didn't stop them from doing that.

The results of all of this, all of this work, and we're talking about over years, was the fact that there were conflicting signals being given. Tar tested one way in one test. Then you did another type of toxicology test; you had an entirely different result. There was no consistency. There was not the medically-required repetitiveness in these types of tests. So as I said, and the results of the company -- the results the companies experienced were the same results the outside scientists were experiencing. And you'll hear that from the evidence.

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In the end, as I told you a minute ago, no silver bullet was found. But certainly no one can question, no one -- I shouldn't say that. There can't be a legitimate question as to what -- as to the sincerity of the companies' efforts and what they achieved. This took a long time. The efforts are still going on.

I think that throughout this case you're going to need to continually be asking yourself: Were there any tests that were available and suggested that the companies didn't actively pursue?

And another question you should ask yourself: Did the companies' concern about the relevance of that test, we just spoke to you about, not the same route of administration, with an animal, with a rat, stop them from doing it? I submit to you from this evidence you will find it did not. That's what the evidence will show you here.

Now, I told you about the Tobacco Working Group. Let me just tell you a bit more. The Tobacco Working Group, as I said, was a 10-year partnership. It consisted of the tobacco companies best and brightest scientists. And the best and brightest scientists from institutions such as, as I told you before, the United States public health community, the

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NIH or the National Institutes of Health, the NCI which is the National Cancer Institute. And part of the National Cancer Institute was the division known as the -- they had a smoking and health program. It was the smoking and health program of the NCI that the TWG reported to and advised. American Cancer Society was a member. Many eminent professors from universities throughout the country and famous scientists, including the very famous Drs. Wynder and Hoffman.

The goal of the Tobacco Working Group was to pursue all efforts to create a safer cigarette. As I said, it was a genuine cooperative effort until about 1978 when the Federal government decided to abandon the effort.

And the evidence will show that they decided they didn't want to work with the tobacco companies anymore. They believed the politically correct thing to do was not work with them and drive toward a society that was smokeless. That's a decision they made. Whether you want to criticize them for abandoning it or not, that's what the evidence will show.

Now, one further point about the TWG that I'd like you to bear in mind, then I'll move on, the Tobacco Working Group, and in particular, whether in

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particular or not, the very famous Dr. Wynder acknowledged the importance of this concept to the public health community.

They believe that it was very important, first of all, driving down tar was it. But they also

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realized that one of the reasons some people, many people, smoked was nicotine. While they felt that the health culprit was the tar, they realized that if you want people, or if you want a large segment of the smoking population to utilize low tar products, they're only going to utilize them if they like them.

So they came up with the concept: It's very important that we develop a low tar product that will have large acceptance by a vast segment of the people who smoke.

Because if you develop a low tar product, and these are basically Dr. Wynder's words, where only 1 or 2 percent of the smokers will use, you really haven't done much. You've got to develop a product where a large percentage will use. And the idea came up, perhaps these companies can do what is necessary to create a cigarette that has low tar and medium nicotine. That was a concept that came right out of the Tobacco Working Group. And you'll hear the evidence about it. It becomes important in a moment or

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two.

Now, after this effort was abandoned, the evidence will clearly demonstrate these companies didn't stop their effort. They continued it. They continued it at not only the same pace, but an accelerated pace, and it continues through today.

I haven't talked to you, and I will in a moment, about some novel or revolutionary products that these companies have developed. And I'll spend a few moments in a minute.

But I think it's important, as this case moves along, please keep asking yourself, test it against the evidence: Was there research or a design for a potentially safer cigarette that was not pursued by these companies? I unequivocally submit to you that from this evidence your answer can be nothing other than no such research or design existed that wasn't pursued.

We'll have witnesses to talk about the novel or revolutionary, for lack of a better term, alternate smoking devices, but I want to briefly discuss three of them.

And before I do, do you remember yesterday Mr. Rosenblatt's allegation of nicotine manipulation: These companies manipulated nicotine to hook smokers.

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Spent a lot of time talking about that.

Well, let me tell you about an effort by one of these companies. They all made similar efforts, but let me tell you about an effort by one of these companies to make a nicotine-free cigarette which ultimately they were successful in doing.

What you learn, let me see if I -- this is a product called Next. Some of you may have heard of it; some of you may have not. It's a Philip Morris product. Just a box that says Next. What this is is almost a totally denicotinized cigarette, no nicotine.

Now, that was not easy to come by. Philip

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Morris spent over -- the evidence will show you over 300 million dollars finally coming up with that product. They developed a process called super critical extraction in order to do it. It basically is much like taking the caffeine out of coffee, making decaffeinated coffee. Their scientists got to it. They did it. They put it in the marketplace, test marketed it and marketed it. And guess what? It failed in the market. Smokers didn't like it. And they reported it doesn't taste like smoking.

I'll tell you about another one. This is an R.J. Reynolds product called Premier. For those of you down here, I promise you it says Premier on here.

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Now, Premier was truly a revolutionary product and a breakthrough, because what Reynolds set out to do was find a way that people could enjoy and smoke a cigarette, but not have the tobacco burning, because it's the burning that creates the smoke; it's the smoke that contains the compounds we talked about.

Reynolds spent many years and 750 million, three-quarters of a billion dollars developing this. What this Premier is is a product that allows the tobacco in this cigarette to be heated rather than burned. It doesn't burn.

Reynolds had to develop a carbon tip heating element. You light the carbon tip, the carbon tip then heats the tobacco as it goes down the tobacco rod. And the result is a very, very low tar, virtually a no-tar cigarette and very low nicotine.

It was a product that Reynolds thought was near perfect. Reynolds put out a 700-page monograph for the scientific community around the world describing this product and how it was developed and everything about it.

In various sectors of the scientific community it was praised as a near perfect cigarette. However, the Surgeon General and other government officials damned the product. Simply said they didn't

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want any part of it. Once again, you'll find it was an effort, they didn't want anybody smoking.

Again, that's okay, but this demonstrates the efforts of these companies in trying, and continuing -- part of the question, remember you're going to be asked, was there a feasible alternative they left on the table they didn't pursue? I think the evidence will clearly say no.

Let me show you a new one. I'm not sure. It may be test-marketed now; it may not. I'm not sure.

It's being test-marketed now. This is a Philip Morris product. It's called Accord. It's a stubby, little cigarette. Now, hundreds of millions of dollars have been spent by Philip Morris in developing it. It's another innovative product. As I said, it not only represents hundreds of millions of dollars, but years of work.

And so far, this testing shows some very promising results. Number one, it dramatically reduces

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the output of smoke, output in smoke of the constituents that the public health community believes may be the harmful ones. In order to do this, PM had to invent a computer chip that acts as a lighter. And when the smoker takes a puff, the lighter senses this and it instantly heats, but not burns, the cigarette.

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Now, a smoker gets eight puffs out of one of these. He can come back, take a puff now, come back in a half hour, take another puff, or come back in a day. But there are eight puffs in this cigarette.

As I said, PM spent millions developing it. They had to invent new metal alloys, and once again, it shows dramatic results in tests concerning tar and nicotine.

It's being test-marketed now. Will consumers accept it? I can't tell you, nor can they. As we sit here in this trial, we may find out some of the results. But right now this is another effort by these companies along the lines of the efforts I spoke about.

What you will learn is that all of these companies have made similar efforts, and all of these companies have tried to modify their products. You'll learn, you'll hear evidence about traditional-type cigarettes with exceptionally low deliveries.

There's a product called Carlton Ultra Light, which is a Brown & Williamson product. It has .01, down to the bottom of that chart, .01 milligrams of tar. Right there. And .002 milligrams of nicotine. So if you would go down here and down here, there are many other products that we don't have time to talk about right now.

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Now, can these companies call any of these products safe or safer? As I told you before, they cannot. First of all, there's no agreement on exactly what a safer cigarette is. Public health community hasn't reached that. And no one has ever come up with a firm definition, so they can't call it safer.

Remember Mr. Rosenblatt talked to you about that yesterday? I wanted you to hear the other part of it.

What's the bottom line of all this evidence, ladies and gentlemen, that I've just spoken to you about? Number one, these companies have and continue to pursue product changes and new product ideas. They haven't slacked off one bit since they began this process in the early '50s. The scientific tests of the day that were being used were utilized by these companies.

As you can see from this chart, incredible success was achieved in lowering tar and nicotine. And far from the suggestion yesterday that these people did nothing, far from that suggestion are the results that are demonstrated on this chart. There was no ignoring. Far from it.

Let me talk to you about something else, that is, the plaintiffs' claim of nicotine manipulation.

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You heard plaintiff yesterday talk about nicotine manipulation by these companies. Clearly, the use of the word "manipulation," it's a pejorative term. It has a sinister import: Somebody manipulates something.

I don't think that's what you're going to find here. Manipulation, by the way, which was used yesterday, suggested that there was an upward effort, an effort to manipulate nicotine upwards. And it was secret, only known to these tobacco companies. The public health authorities didn't know about it. There was some secret, insidious effort by these companies to manipulate upward nicotine and not to tell anybody about it, and the result is, Mr. Rosenblatt claims, all of his clients got hooked. He suggests that the smokers didn't know. He didn't say this, but I think that clearly --

MR. ROSENBLATT: Objection, Your Honor.

THE COURT: Sustain the objection. Let's move on, counsel.

MR. MOSS: I think the import that the plaintiff has made.

THE COURT: Make an allegation, whatever it may be, in the aegis of an opening statement.

MR. MOSS: Pardon me, sir. Can I put it in the form of an allegation?

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THE COURT: I meant use the term. I'd like you to stick strictly to opening statement. You know what I'm talking about.

MR. MOSS: All right. In any event, what you saw and what the evidence will show is the nicotine levels over the past 40 years have dramatically fallen. It's that chart back there. I told you how nicotine falls with tar, almost a 70 percent drop.

Various cigarettes, various deliveries of nicotine and tar are available in the United States market. It's a wide range of tar and nicotine deliveries from what I showed you down at the bottom of the chart to where you see it is now in 1997.

Put it back up.

There's a wide variety, and folks, the evidence is going to show, this isn't a secret. It's the farthest thing from a secret. As I told you before, the tar and nicotine deliveries of each one of the brands must be reported to the United States Government, to the FTC, Federal Trade Commission, regularly. More than once a year. And they're published and they're put in the advertisements. The smoker can choose whatever level he or she wants. No secret here.

You'll learn through the evidence -- I have a

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chart here that I was going to draw for you, an example of the variety of nicotine and tar deliveries available. But suffice it to say, you'll learn about that and I believe you'll conclude that what I've told you is absolutely correct on what the evidence will

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show. There's a wide variety of choices available from the very, very bottom to what is qualified a full-flavor cigarette.

And as I told you, the tar and nicotine deliveries are a result -- the tar deliveries are a result of blend. The tobacco companies blend first for taste and second for tar. Nicotine turns out to be whatever it turns out to be. There is no effort to blend for nicotine. Nicotine follows tar. As tar comes down, so does nicotine. If you raise the tar, nicotine will follow it right up. The companies blend taste because that's what smokers want, and they look for tar deliveries and they give them as wide a range of a choice as anyone could ever perceive.

The cigarette market itself is divided into various tar segments. It's called regular, which I spoke about, light and then ultra light. The Capri Ultra is an example of the ultra light. And they are three products and varying deliveries are available.

As I said, blending tobacco is an art; it's

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not a nicotine-driven science. You'll learn from people that will come here, you'll learn from leaf blenders, they'll tell you about it. And you'll also learn something that smokers generally do not like, high-nicotine tobaccos or blends. Because they'll report that the taste is rough, that the taste is harsh. High-nicotine cigarettes simply don't sell very well.

There was some discussion yesterday, and let me respond to something that was said yesterday about ingredients.

You'll learn that the companies, in making a cigarette, use moisturizers and flavorants, develop unique flavors, to differentiate flavors between brands. You'll learn that flavors such as licorice and chocolate flavors have been used. You'll learn of the processes used by the companies to determine -- we'll bring you evidence what the companies do to determine the safety of any ingredient before it's ever used in a cigarette.

You'll also learn that Federal law has required that, or requires that ingredients of this kind be reported to the government each year, and the companies each year, you'll learn, have made those reports.

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Now, you'll learn that the HHS or the Department of Health and Human Services of the Federal Government is charged with the responsibility to assess the safety of the reported ingredients.

You'll also learn that the HHS, Health and Human Services Division of the United States Government has never, never determined that any of the ingredients reported or ever said that any ingredients reported by the companies are unsafe.

Again, ladies and gentlemen, nicotine is not added. It's a natural part of tobacco. As I said, there's less nicotine in the cigarette than there was

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if you took it out of the leaf. Again, there has been no secret here. It has been discussed publicly for years and years.

You'll learn through the evidence that there is more to smoking than just nicotine. Nicotine is an important part, for sure. And the companies have studied nicotine. You'd expect them to.

You know, Mr. Rosenblatt -- well, let me begin differently.

As you can see, we obviously -- our position is, and we'll prove it, that there's no nicotine manipulation. First of all, you see how the nicotine levels have fallen dramatically over the past several

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years. There is no secret here; it's an open book.

Nothing, I think, can demonstrate this better than the fact, and you learned this from Mr. Heim's opening, that over 46 million people, 46 million people, have quit smoking. Most by simply deciding to quit. Remember I talked about common sense a little while ago? Use that in your deliberations. What does common sense tell you about that? 46 million people have been able to quit. We'll hear a lot more about that.

There will be no evidence that will be credible in this case to demonstrate that these companies manipulated nicotine to hook. Sure, nicotine was studied; I admit that. Remember I told you about the TWG? It was the U.S. Government itself that suggested that ways be studied to create a cigarette with low tar and medium nicotine so that the nicotine doesn't drop as fast. So you get more of a segment of the smoking population utilizing low tar cigarettes. Give the consumer a little more nicotine, keep the nicotine up so that more people will smoke it. That was the government's idea.

Now, yesterday Mr. Rosenblatt said one of the ways in which -- I'm not sure what it was. I read it last night. But, in any event, he told you about my

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client, Brown & Williamson's use of a tobacco called Y-1. What I think may jog your memory is he called it a super-duper tobacco. He told you how this is one of the ways in which all of this manipulation occurs and suggested all this hooking occurs.

Let me tell you a little bit more that you're going to learn about that that you didn't learn yesterday.

First of all, it was the TWG that recognized as a possible solution to developing this low tar/ medium nicotine cigarette that perhaps new strains of tobacco could be developed that had a higher nicotine content, so that if you started out with a tobacco product with higher nicotine, you wouldn't have as low a nicotine/tar relationship. You perhaps could achieve the medium nicotine/low tar cigarette. That was the TWG.

And indeed, in 1977, you'll learn of a very famous scientist involved in the smoking and health

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field named Dr. Michael Russell, who indicated that the pursuit of a low tar/medium nicotine cigarette was a very desirable goal.

This effort was linked to the public health community's concern: Let's try to find a way to get people smoking low tar. Some companies tried to

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respond to this suggestion to develop such a cigarette.

Now, let me talk about two claims made yesterday: First of all, about Y-1, and secondly, about these companies' alleged use of ammonia to create what Mr. Rosenblatt referred to as free nicotine. I submit to you that the evidence will clearly demonstrate plaintiffs and their lawyer are flat wrong in this claim.

I told you about Y-1 and I told you about there's some things that you didn't learn yesterday that the evidence will show. First of all, you're going to learn that it wasn't Brown & Williamson that initiated the content of this super-duper, as was referred to yesterday, tobacco, this strain.

Guess who it was? It was the United States Government. The United States Government developed the strain that is now called Y-1. It was developed by the U.S. Department of Agriculture by a researcher and scientist by the name of James Chaplin. Mr. Chaplin went about this in an effort to satisfy or attempt to achieve one of the goals that the Tobacco Working Group and the public health community thought would work.

The way he developed it is basically as any plant geneticist would, is cross tobacco and thereby he created a higher nicotine tobacco. As I said, you

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weren't told yesterday about the fact that the government, number one, developed it and it was in response to a suggestion.

Now, Brown & Williamson experimented with Y-1, you'll find, to make a low tar/medium nicotine cigarette. The product that the government and the TWG suggested is one that ought to be tried so you can get a larger segment smoking low tar cigarettes. They developed an experimental cigarette using Y-1. It was never sold or marketed because it flunked all taste test panels. All taste test panels it flunked. I can't say it any clearer.

Now, from September of '92 to June of '94, Brown & Williamson indeed used a small amount of an expanded form of Y-1 in some of its commercial products, a very small amount, which was done to add a flavor. You'll hear about this. There is absolutely nothing wrong with this tobacco. There is no measurable or appreciable increase in the nicotine and whatever its nicotine output is is a matter of public record.

Now, since 1994, Brown & Williamson has used very small amounts in some of their products of Y-1 simply in an effort to use up the inventory that it has. And, once again, you'll hear about it and see for

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yourself.

Let's turn to plaintiffs' ammonia pH claim yesterday. Mr. Rosenblatt yesterday told you that the defendants used ammonia to change the pH, thereby creating free nicotine which he suggests --

MR. ROSENBLATT: Objection, Your Honor.

MR. MOSS: Your Honor, I need to put this in context.

(Proceedings were had at sidebar.)

MR. MOSS: There's an allegation about ammonia and pH and nicotine manipulation that I want to address, that our evidence will address.

First of all, these companies do not utilize ammonia to increase a free form of nicotine in their cigarettes. Even if that was done, you will learn that free-form nicotine does not get to the brain faster than bound nicotine. That's bad science to suggest that it does.

And you'll learn that from our witnesses, you'll learn that from, I submit, some of the plaintiffs' witnesses. Just scientifically doesn't work that way.

First of all, these companies do not use enough ammonia to change the pH of tobacco smoke in any meaningful way. You'll learn that. As I said, there

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will be no evidence that any free nicotine has been increased in any cigarettes manufactured by these defendants.

You'll learn that scientists inside and outside the companies at a particular time theorized that perhaps by increasing the pH, making it more base or alkaline than acid, you create more free nicotine, and therefore, do what the allegation is.

There's a lot of documents that hypothesize about it. But in the end, you'll learn that those were just hypotheses, but they were inaccurate, absolutely plain and simple wrong.

Now, you will learn that the companies use ammonia in small amounts in some of their products. You'll also learn that ammonia occurs naturally in tobacco. You may be surprised to learn that ammonia is used in various common products all of us use every day like bread, ice cream, beer, sausage, used in small amounts.

The companies over the years learned that small amounts of ammonia add a taste to the tobacco that smokers describe as a roasty or toasty taste. And that's similar to what it does to other products, particularly bread products.

Now, there was some discussion yesterday

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about Marlboro cigarettes and these companies' analysis of Marlboro. Let me talk to you about the evidence on that will be.

Now, you'll learn, if you haven't already, that these companies that Mr. Heim and I have spoken

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for today are fierce competitors. They compete tooth and nail for a segment of the market of smokers. Big competition.

Now, of course, it's normal to understand that a competitor, who is making a product similar to yours and sees that your product is selling so much better than theirs -- in this case Marlboro became a big, big seller and was a big seller. So it isn't surprising these companies and their scientists attempted to find -- why can't we do -- what is it about Marlboro that's making it so popular with the smoking population? They basically went about investigating it. They reverse-engineered it. Some companies' scientists detected that in Marlboro there was some ammonia; small amounts of ammonia had been added. Some of the scientists theorized that the ammonia may be affecting the nicotine and maybe that's what was affecting this, causing Marlboro to be such a good seller.

As I told you, these theories you'll learn

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from the evidence turned out to be wrong. Once again, you need to apply some common sense. If that theory was true, then all companies would use ammonia or use the same amounts of ammonia and generally have the same success with their product as Marlboro. But it doesn't happen that way.

Let me give you another common sense test. Philip Morris itself has a number of products to which ammonia is added for the taste. And they have a number of products in addition to Marlboro -- they have some products where more ammonia is added, some products where less ammonia is added, and some products where exactly the same amount of ammonia is added as Marlboro. You know what? None of those products, including the ones with the same amount, can touch Marlboro. In fact, most of them are poor sellers. You'll find that. That's what I talk about common sense.

Plaintiff -- there was an allegation that Kool cigarettes, manufactured by Brown & Williamson, utilized ammonia, and there was an allegation that this has been utilized, ammonia, in Kool cigarettes for many years.

The evidence is going to show you that Kool, the Kool product, which has been manufactured indeed by

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Brown & Williamson, for many years for the first time used ammonia in 1993. Allegation versus fact, ladies and gentlemen.

In short, plaintiffs' allegations of nicotine manipulation through the use of Y-1, the use of ammonia, are simply not going to be borne out by the evidence in this case. Just bear with us until we have an opportunity to put on our case. I submit to you this is one of those commitments.

Just a few comments about the allegation about youth smoking. Plaintiffs apparently seek to blame the tobacco companies for under-age smoking.

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What I submit, this is a slick effort by the plaintiffs --

MR. ROSENBLATT: Objection, Your Honor.

THE COURT: Sustained.

What the evidence will show, sir.

MR. MOSS: I told you earlier that you may be surprised to learn that these companies don't sell to consumers, old or young. They don't. That's retailers. That these companies are not charged with enforcing the laws that exist which prohibit under-age people from smoking. That's not theirs. No one has asked them to do it. They can't do it. It's the job of the state governments and the retailers. I also

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submit to you that it's probably the job of parents.

Let's talk about the reasons why young people begin to smoke. We'll have evidence, we'll have witnesses that have expertise in this area, that is, expertise in the area of under-age children, risk-taking behaviors and attitudes, risk-taking personalities. It's just a fact of life.

You'll learn, you may be surprised to, there are many, many surveys, field studies and great numbers of research projects and numerous academic papers written about causes of risk taking, risky behavior by youths, including smoking.

Now, what you'll learn are the causes of under-age smoking are peer pressure; their family role models: Parents in the home smoke, do siblings, brothers or sisters smoke? You will find that there is a significant more likelihood that youngsters in those kinds of homes will smoke. And smoke under-age.

Rebellion by youngsters is a reason. Youngsters, under-age people, start to smoke as a curiosity, as a wanting to belong, wanting to appear older or more mature. These are not things that can be laid to the door step, I submit, of the tobacco companies. They just can't.

Let me ask you something. I think it's a

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question you should ask yourself, based upon the evidence: Are there other risky behaviors that there's been an increase in youngsters? The evidence will show in under-age people, our evidence will show there are.

Our evidence will demonstrate, unfortunately so, that there has been an increase, as regretful, and I can say this no other way, as regretful and societally shameful as it is, there has been an increase or rise in teenage drug use, teenage pregnancy, teenage crime, teenage alcohol use, teenage gun use, the joining of gangs. Can't get away from it, folks.

I ask yourself: Can you lay that at the foot of the tobacco companies? Are the tobacco companies responsible for that? Ask yourself that. It's common sense, folks. Who is to blame for that, what I just spoke about, what I call societally shameful?

The evidence will show perhaps it's the parents, perhaps it's the absence of any family

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supervision, perhaps it's the breakdown that we see all too much in the traditional family unit. All of this perhaps is today's children's lack of respect for authority.

The list is long and you'll hear it from the evidence, but my point is that the rise in under-age

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smoking, whatever it may be due to, is not attributable to the tobacco companies. I think the evidence will show it's attributable to the same things that we just spoke about. Once again, ladies and gentlemen common sense test.

You'll find from the evidence, we'll demonstrate it, that these companies oppose under-age smoking. You'll find that they developed and supported programs to discourage youth smoking.

For example, and because of the lateness in the day and your desire to get out of here, and mine, that you get out of here, I'll shorten it.

But they developed educational materials for school curriculums to help teach kids to say no to peer pressure. There are a lot of other programs that our witnesses will talk about. These companies don't want children to smoke.

Let me give you a practical, for no other reason, and I submit this is not the reason, but for no other reason, number one, they believe it's an adult activity. But number two, every time there is under-age smoking, who gets blamed? Not the people I spoke about; the tobacco companies get blamed. It just doesn't make sense for them to expose themselves to that type of public fury. They do get blamed and our

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evidence will demonstrate that it's not the tobacco companies. But if for no other reason.

Now, let me address my last area. Two, three minutes I think. And that is the plaintiffs' allegation of fraud. Basically, I think in sifting through it, plaintiffs claim it was fraud for these defendants to state their opinions on causation and addiction.

I submit the evidence will show in this case that these defendants had a right, had an absolute right to state their opinions even, even if some, many or a whole lot of people disagree with them. Even if a majority of the people disagreed with them. I think the evidence will show they had a right to state their opinions, what they thought.

Now, as you learn, I believe yesterday and today, these companies have been under attack for many, many years. For years the health risks of smoking and the difficulty in quitting claims have been used to advocate bans or restrictions in smoking. I'm not suggesting that shouldn't have been done; that's up to the people to believe what they believe. But on the same side of the equation, or the other side, is the companies' right to have expressed their opinions.

And they did it. And I think the evidence

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will show that indeed they've defended themselves and they've defended themselves properly. They had a right to do it. They owed it to shareholders. They owed it to their employees, and they told people what their opinion was.

Don't forget, folks, the evidence will show they are making a legal product. They're citizens of this country. They pay billions in taxes each year. They've got a right to express their opinion.

Incidentally, let me tell you one thing. The Surgeon General of the United States by Congressional law is charged with reporting to Congress each year, reporting and recommending to Congress each year regarding smoking and health.

You are going to find from the evidence that ever since that has existed, and it's been for many, many years, no Surgeon General has ever suggested that cigarettes be made illegal. None. It's a legal product. They have a right to express their opinion. You don't have to agree with them. Maybe you do. But there's no fraud in expressing their opinion.

And by under attack what I mean is there hasn't been a time since 1954 that these companies have been without facing a lawsuit.

Not, since 1954 there's always been a lawsuit

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or lawsuits going. They've incurred increased government regulations and restrictions over the past 44 years. They're always facing proposed legislation. They're facing increased taxation. And the latest effort, and again, I'm not criticizing the effort, but I'm trying to tell you what the facts are, have been restrictions as to where people can smoke. You may agree with them. But they have a right to state their opinion, ladies and gentlemen, and that's what the evidence will show.

These companies are not without rights. They've got a right to respond and express their opinion. The fact that these companies have taken a public position and their opinion is that -- and they refuse, absolutely refuse to agree that cigarette smoking is like use of heroin or cocaine. They will not agree to that. Their opinion is that it is not.

Mr. Heim told you about it and we'll bring evidence as to why it is vastly different. And we've got a right to bring -- just as we have a right to bring that evidence, they had a right to express their opinion.

Stating one's opinion, ladies and gentlemen, you'll find from the evidence is not fraud. I suggest that if nothing else comes through from the evidence

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you hear in this case, I believe from that you will conclude that, number one, it has always been known that smoking presents a risk of disease and smoking can be difficult to quit. It has been known. That's what I mean by the most-studied product. It has been known

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for decades and decades. Someone would have to be living, I suggest the evidence will show, under the proverbial rock not to know those two things. These I submit are two critical and undisputed facts in this case.

These companies have expressed their opinions as I suggested in public, in court, and in the regulatory environment. And they were entitled to do so and are entitled to do so.

They're also entitled, as is the plaintiff, as are the plaintiffs, to have you listen to the evidence in this case and decide this case upon the evidence, not likes and dislikes, passions and prejudices, but upon the evidence that you're going to hear.

Folks, this is going to be a long trial. I believe the evidence will show you that there was a timely response by these companies to the health concerns that these companies are not responsible for youth smoking. There's not been any nicotine

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manipulation to hook smokers and there has been no fraud because the risks involved with smoking have long been known by the public.

I apologize for the length of time that I've taken. When I started I was sure I'd be through by quarter to four. I was wrong. Probably won't be the last time I'll be wrong or you think I'll be wrong. But I do very much appreciate you all sitting through this and thank you.

THE COURT: All right. Folks, I guess we put in a day. We will recess at this point and reconvene tomorrow. You be back here at 9:15. That will get you over some of the problems of the going-to-work traffic for some of the folks in the north or south end of the county.

Be here at 9:15. Meet downstairs in the jury pool. Wait for our call. We'll get you back up here when you get assembled.

Again, the same rules apply. I'll say this each and every night. Do not talk about the case. Do not discuss the case with anyone. Do not do any investigation on your own. Do not make up your mind on any of the issues. Go home to eat. Enjoy the evening with your families or whatever it is you want to do. Come back tomorrow. We'll work through the day until

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about 5:00. See you folks at 9:15, 9:30 for the Court.

(The panel of jurors exited the courtroom.)

THE COURT: We'll take up that issue with that juror and his employment tomorrow morning when he comes in earlier.

Anything else you want to talk about now?

MR. KIRBY: What time?

THE COURT: For you folks, 9:30.

I assume that you have a witness coming in?

MR. ROSENBLATT: I do. He's Dr. Julius Richmond. He's due in this afternoon.

THE COURT: Do you expect to use him all day?

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MR. ROSENBLATT: He's my only witness and I expect he will take most of the day. But in fairness, until I get a feel for how exhaustive they are in cross, it's very difficult --

THE COURT: However it works.

MR. ROSENBLATT: And I've got a witness for the following day: Dr. Davis, Ronald Davis.

THE COURT: All right. We'll see you folks tomorrow. Court will be in recess.

(Court was adjourned at 4:45 p.m.)

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